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116

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,592	08/13/2001	Jess Paul Fuller	V0005/7097	9457
28120	7590	12/08/2004	EXAMINER	
ROPE & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			NAFF, DAVID M	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/830,592

Applicant(s)

FULLER ET AL.

Examiner

David M. Naff

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 12 November 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: None.

Claim(s) objected to: _____.

Claim(s) rejected: 1-27,35,37-39,41,43 and 162-170.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


David M. Naff
Primary Examiner
Art Unit: 1651

Continuation of 2. NOTE: Amended claim 41 requiring a three-dimensional silicone rubber article containing porous channels throughout the article has not been previously claimed and raises new issues for consideration. Claim 41 previously encompassed a second aspect of the invention as described in the specification (paragraph bridging pages 4 and 5) that resulted in a textured surface (claims 25 and 26). Now limiting claim 41 to porous channels throughout a three-dimensional article creates new issues for consideration. Additionally, requiring porous channels raises the issue of new matter since the specification discloses (page 5, line 26) a "system of pores and channels" and not "porous channels"

Continuation of 5. does NOT place the application in condition for allowance because: of reasons set forth in the previous office action of 8/10/04. Contrary to applicants' argument, the references are compatible and combinable since all relate to producing a porous polymer. All of the references produce a three-dimensional structure since all the structures have a third dimension. Williams et al and Mikos et al are not creating pores only on the surface portion of a membrane since particles that are leached can be dispersed in a solution of the polymer. While Fuller (WO) produces a surface porous layer, this is the second aspect of the invention of producing a textured surface as disclosed in the specification (paragraph bridging pages 4 and 5) and encompassed by the present claims as indicated by dependent claims 25 and 26. Moreover, it would have been obvious that the particulate-leaching technique can be used to produce pores throughout a polymer structure as suggested by Williams et al and Mikos et al disclosing mixing particles with a solution of polymer precursor. There is seen nothing unexpected in applying the particulate-leaching technique to silicone rubber. The references are applied in combination and must be considered together as a whole. These type of comments also apply to the obvious double patenting rejection. The amendment shows that claims 44-161 are withdrawn. However, these claims were canceled by an amendment of 10/20/03.